

REMARKS

The present reply is responsive to the final Office Action mailed February 8, 2005.

It is respectfully requested that the finality of this Office Action be withdrawn. Indeed, the Examiner's attention is respectfully drawn to the following:

706.07(a) Final Rejection, When Proper on Second Action

...
Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). ... Furthermore, a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will not be made final if it includes a rejection, on newly cited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art.
...

Therefore, this Office Action may not be made final, as it includes a rejection on newly cited art of a number of claims not amended by Applicant (e.g., claims 2-4, 8-10 and 14-16) in spite of the fact that other claims (e.g., claims 1, 7 and 13) have been amended to require the newly cited art. Tsuei et al. is newly cited art, and claims 2-4, 8-10 and 14-16 were not previously amended.

Therefore, it is respectfully submitted that the finality of the Office Action mailed February 8, 2005, is improper and should therefore be withdrawn. Applicant's representative, therefore, respectfully requests that the Examiner withdraw the finality of the outstanding Office Action, reset the period for response and issue a new, non-final Office Action.

No fee is due with this communication. The Commissioner is authorized to charge any fees which may be required to Deposit Account No. 15-0635, referencing OID-1999-152-01.

Respectfully submitted,

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